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June 18, 2019

By: U.S. Mail (first class) and Email

Samantha K. Breslow
Horwood Marcus & Berk
500 West Madison Street
Suite 3700
Chicago, IL 60661
SBreslow@hmblaw.com

Re: [REDACTED]

Dear Ms. Breslow,

I am writing in response to your letter of March 8, 2019 (attached), requesting a private letter ruling ("PLR") pursuant to Uniform Revenue Procedures Ordinance Ruling No. 3 ("Ruling No. 3"), concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to certain transactions between [REDACTED] and its customers.

Ruling No. 3 grants the Department of Finance ("Department") discretion to issue a PLR. See Section 5(f) ("Whether to issue a private letter ruling . . . is within the discretion of the Department.") Ruling No. 3 also authorizes the Department to issue a general information letter ("GIL") in lieu of a PLR. See Section 10 ("the Department, through the Corporation Counsel's Office, may issue a general information letter ... This letter is a statement of the City's position as to a general area of the law and is not to be considered a private letter ruling.") Based on the nature of the transactions described in your letter and the issues presented, the Department has elected to issue a GIL and not a PLR.

The Department responds to the four issues set forth in your letter as follows:

Issue No. 1: "Where [REDACTED] itself operates the hoist and related equipment such as floor gates, gate extensions, and grillage, then [REDACTED] is not a 'lessor' of the hoist and is not subject to the Lease Transaction Tax in any associated charges."

The Lease Tax imposes a tax upon: "(1) the lease or rental in the city of personal property, or (2) the privilege of using in the city personal property that is leased or rented outside the city." See 3-32-030(A). Pursuant to the

Code, "'lease' or 'rental' means any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term, and includes a 'nonpossessory lease.'" See 3-32-030(I). The Department reads issue 1 as describing transactions in which [REDACTED] retains possession and control of its equipment. The Department agrees Lease Tax would not be due on such transactions.

Issue No. 2: "[REDACTED] is not subject to the Lease Transaction Tax on property that is permanently incorporated into real property as a result of its construction services."

This question appears to contemplate that [REDACTED] is providing a non-taxable service (such as installation of a hoist), and incidental to providing that service [REDACTED] permanently incorporates certain tangible personal property into the real property. The Department agrees the Lease Tax is not applicable to a charge for personal property that is permanently incorporated into real property in conjunction with such a service, as described in the first complete paragraph on page three of your letter.

Issue No. 3: "Any separately stated and optional charges for labor or services are not subject to Lease Transaction Tax as a 'lease' or 'rental'."

§ 3-32-020(K) of the Code reads in pertinent part: "The term 'lease price' or 'rental price' shall exclude separately stated optional charges not for the use of personal property . . .". For the services identified in your letter at page three, to the extent a service is optional and the charge for it is separately stated the Lease Tax would not apply provided the charge is not for the use of the property, in whole or in part. Determining whether a particular charge is or is not for the use of the leased property may well turn on an individualized inquiry into the transaction.

Issue No. 4: "Any property that is destroyed during the course of construction is not leased or rented and is therefore not subject to the Lease Transaction Tax."

This question appears to contemplate that [REDACTED] is providing a non-taxable service (such as installation of a hoist), and incidental to providing that service destroys certain property such as steel beams, plywood or timber, as described in the last paragraph on page 3 of your letter. In that situation, the Department agrees that [REDACTED] would be viewed as the end-user of the property, and its charge for supplying the property (whether bundled with the service charge or separately stated) would not be subject to the Lease Tax.

Letter to Samantha K. Breslow

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This GIL is based on the text of the Lease Tax and other applicable law as of the date of this GIL, and the representations in your letter.

Very truly yours,



Weston Hanscom

Deputy Corporation Counsel

Revenue Litigation Division

City of Chicago, Department of Law

cc: Elaine Herman, Department of Finance

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March 8, 2019

**BY E-MAIL (whanscom@cityofchicago.org)
and CERTIFIED MAIL (#7018 1830 0001 0994 7419)
RETURN RECEIPT REQUESTED**

Weston W. Hanscom, Esq.
Deputy Corporation Counsel
Revenue Litigation Division
City of Chicago Law Department
30 N. LaSalle Street, Room 1020
Chicago, IL 60602

Re: Private Letter Ruling Request

Dear Wes:

As counsel for and on behalf of [REDACTED] (" [REDACTED] an Illinois corporation, we respectfully request, from the City of Chicago Department of Finance ("Department"), a Private Letter Ruling ("PLR") confirming the applicability of the Chicago Personal Property Lease Transaction Tax ("Lease Transaction Tax") found at Section 3-32-030(A) of the Municipal Code of Chicago ("MCC") to [REDACTED] rental of certain equipment and materials within the City of Chicago.

[REDACTED] recently settled litigation regarding this issue and is not currently under audit by the Department. [REDACTED] was advised by the Department's counsel, Steven Tomiello, that any prospective guidance could only be provided via a private ruling request. In addition, [REDACTED] is unaware of any authority contrary to the views expressed in this request. Furthermore, we ask that [REDACTED] name, address and any other identifying information, including any exhibits attached hereto, be kept confidential and be deleted from any public dissemination of the requested and/or issued PLR. A Power of Attorney authorizing us to represent [REDACTED] before the Department in connection with this PLR request is attached and marked Exhibit A.

FACTS

[REDACTED] is an Illinois corporation located in Chicago [REDACTED] Illinois. [REDACTED] contracts with businesses in Chicago to provide custom construction elevators (or "hoists")

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and related equipment, such as floor gates, gate extensions, enclosures, and grillage, for mid, high, and super high rise construction businesses in Chicago. [REDACTED] and its customers (“lessees”) enter into written lease agreements whereby the lessees agree to make monthly payments for a specified period of months.

APPLICABLE LAW

THE LEASE TRANSACTION TAX

The City of Chicago imposes its Lease Transaction Tax at the rate of 9% upon (1) the lease or rental of personal property or (2) the privilege of using in the City personal property that is leased or rented outside the City. MCC § 3-32-030(A). The incidence of the tax and the obligation to pay the tax are upon the lessee of the personal property. MCC § 3-32-030(A). For purposes of the Lease Transaction Tax, the terms “lease” or “rental” are defined as “any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or some other term[.]” MCC § 3-32-020(I).

The term “lease price” or “rental price” means “consideration for the lease or rental of personal property, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses whatsoever, but not including charges that are added to the price by a lessor on account of the tax imposed by this chapter or on account of any other tax imposed on the lessee for the lease or rental of personal property.” MCC § 3-32-020(K). The term “lease price” or “rental price” shall exclude separately stated optional charges not for the use of personal property. *Id.*

A “lessor” is defined as “any person, including the assignee of any lease or rental agreement, who leases or rents personal property to users.” MCC § 3-32-020(M). Similarly, a “lessee” means “any person who leases or rents personal property from another, whether the lease or rental price is paid by the lessee or by another person.” MCC § 3-32-020(L).

Where an operator retains exclusive control and possession of tangible personal property and for a given transaction the property is used solely by the operator to provide a service to the purchaser, the transaction is not subject to the Lease Transaction Tax. *See*, Chicago Personal Property Lease Transaction Tax Ruling #4.

DISCUSSION

[REDACTED] and its lessees enter into certain written agreements whereby [REDACTED] operates the hoist and related equipment on behalf of the customer. If [REDACTED] operates the hoist and related equipment, it does not transfer possession or use of the hoist and related

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equipment to the lessee. A “lease” or “rental” refers to “any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term[.]” MCC § 3-32-020(I). If ██████████ operates the hoist as part of the transaction, it does not engage in the “lease” or “rental” of the equipment, but rather provides a nontaxable service. Chicago Personal Property Lease Transaction Tax Ruling #4. Accordingly, ██████████ requests a ruling that its charges for the hoist and related equipment are not subject to Lease Transaction Tax if ██████████ operates the hoist and related equipment. ██████████ may, however, be subject to Home Rule Municipal Retailers’ Occupation Tax or Chicago Nontitled Personal Property Use Tax. MCC § 3-32-020(I); MCC § 3-40-010; MCC § 3-27-030.

Further, ██████████ engages in certain transactions whereby ██████████ permanently incorporates certain personal property, such as tie-ins and inserts, into the real property of the customer during construction. The property is not removed after ██████████ completes its construction services because it becomes a permanent part of the real estate. Accordingly, ownership of the property is transferred to the lessee as part of the construction process. The Lease Transaction Tax is imposed on the “lease” or “rental” of personal property, which is defined as the “transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term[.]”MCC § 3-32-020(I). In these circumstances, where ██████████ transfers ownership of certain personal property to the lessee as part of the construction process, ██████████ requests a ruling that it is not subject to the Lease Transaction Tax on the personal property.

Additionally, ██████████ also imposes separately stated and optional charges for labor or services, including maintenance of the hoist, transportation of the equipment to the construction site, installation of the hoist, jumping the hoist, engineering, and dismantling of the equipment. These charges are imposed regardless of whether ██████████ or its customer operates the hoist. If ██████████ customer operates the hoist and related equipment, then ██████████ requests a ruling that the “lease price” of ██████████ hoist or equipment does not include separately stated and optional labor or service charges provided in conjunction with the property.

Lastly, certain materials or property, such as grillage and enclosures, are destroyed in the process of construction or as a result of ██████████ installation services. Grillage consists of steel beams and creates a custom floor base or foundation for the construction hoist. Enclosures, which are usually made of plywood and timber, serve as walls around the hoist on the ground floor of the real property. Because these items are destroyed as the result of ██████████ services, ██████████ is the end-user of the property. MCC § 3-32-020(I). Accordingly, any property that is destroyed as a result of construction or ██████████ services is not leased or rented and is therefore not subject to the Lease Transaction Tax.

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REQUEST FOR RULING

On behalf of [REDACTED], we respectfully request that the Department issue a PLR declaring that:

1. Where [REDACTED] itself operates the hoist and related equipment such as floor gates, gate extensions, enclosures, and grillage, then [REDACTED] is not a “lessor” of the hoist and is not subject to the Lease Transaction Tax on any associated charges. MCC § 3-32-020(M).
2. [REDACTED] is not subject to the Lease Transaction Tax on property that is permanently incorporated into real property as a result of its construction services. MCC § 3-32-020(I).
3. Any separately stated and optional charges for labor or services are not subject to the Lease Transaction Tax as a “lease” or “rental”. MCC § 3-32-020(K).
4. Any property that is destroyed during the course of construction is not leased or rented and is therefore not subject to the Lease Transaction Tax. MCC § 3-32-020(I).

* * * * *

Thank you for your consideration of our request. Should you have any questions or require further information, please do not hesitate to contact the undersigned. Further, we respectfully request a conference prior to any formal denial of the ruling requested herein.

Very truly yours,



Samantha K. Breslow

SKB:ko
Enclosures

cc: [REDACTED]
[REDACTED]
David A. Hughes, Esq.

EXHIBIT A



City of Chicago
Department of Finance

Power of Attorney and
Declaration of Representative

PART I. - Power of Attorney

Taxpayer(s) name, identifying number, and address including ZIP code (Please type or print)

[Redacted taxpayer information]

hereby appoints [name(s), address(es), including ZIP code(s), and telephone number(s) of individual(s)]*

David A. Hughes
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as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Chicago Department of Finance for the following tax matter(s). Specify the type(s) of tax and year(s) or period(s).

Table with 2 columns: Type of Tax, Year(s) or Period(s). Row 1: Transaction Tax Ruling Request, N/A.

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters (excluding the power to receive refund checks, and the power to sign the return, unless specifically granted below).

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

- 1 [X] the appointee first named above, or
2 [] (names of not more than two of the above named appointees)

Initial here if you are granting the power to receive, but not to endorse or cash, refund checks for the above tax matters to:

- 3 [] the appointee first named above, or
4 [] (name of one of the above designated appointees)

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the Department of Finance for the same tax matters and years or periods covered by this power of attorney, except for the following:

(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

Signature of or for taxpayers(s)

(If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.)

[Redacted signature] (Signature) [Redacted title] (Title, if applicable)

March 8th, 2019 (Date)

(Also type or print your name below if signing for a taxpayer who is not an individual.)

(Signature) (Title, if applicable) (Date)

*You must authorize an organization, firm, or partnership to receive confidential information, but your representative must be an individual who must complete part II

